

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2004-0123, Francis P. Feeney & a. v. Jean Murphy & a., the court on December 1, 2004, issued the following order:**

The plaintiffs, Francis P. Feeney and Stacy L. Feeney, appeal an order of the superior court granting summary judgment to the defendants, Jean Murphy and Ann Furbush. They contend that the superior court erred in finding that no contract was formed for the sale of land. We affirm.

“In reviewing the trial court’s grant of summary judgment, we consider the affidavits and other evidence, and all inferences properly drawn from them, in the light most favorable to the non-moving party.” Godbout v. Lloyd’s Ins. Syndicates, 150 N.H. 103, 105 (2003). “Summary judgment is proper only if there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Cricklewood on the Bellamy Condo. Assoc. v. Cricklewood on the Bellamy Trust, 147 N.H. 733, 736 (2002).

RSA 506:1 (1997) provides: “No action shall be maintained upon a contract for the sale of land unless the agreement upon which it is brought, or some memorandum thereof, is in writing and signed by the party to be charged or by some person authorized by him in writing.” In this case, each of the defendants owns a one-third undivided interest in real estate; their sister owns the remaining one-third undivided interest. The contract was for the sale of the property in its entirety rather than for one-third or two-thirds undivided interest. The sellers were listed as all three owners. The trial court found that there was no writing that satisfied the statute of frauds with respect to the third sister. We find no error in the trial court’s finding. Moreover, because the contract called for the conveyance of the property in its entirety, absent agreement by the third sister, there was no enforceable contract. Cf. Pearson v. Baldwin, 81 N.H. 247, 251 (1924).

Affirmed.

BRODERICK, C.J., and NADEAU and DALIANIS, JJ., concurred.

**Eileen Fox,  
Clerk**

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